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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA  
NORTHERN DISTRICT OF THE STATE OF CALIFORNIA  
SAN JOSE DIVISION

JIMMY D. HAWS, SETH DANIEL HAWS )  
and MIA SKYE HAWS, minors, by and )  
through their guardian ad litem, CARRIE A. )  
HAWS, and CARRIE A. HAWS, individually )

Plaintiffs,

v.

COUNTY OF MONTEREY, MICHAEL )  
KANALAKIS, NATIVIDAD MEDICAL )  
CENTER and DOES 1-300, inclusive. )

Defendants.

Case No. C 07-02599 JF

**JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED  
ORDER  
(RULE 16-9)**

**Date:** September 21, 2007  
**Time:** 10:30 a.m.  
**Dept.:** Court Room 4

The parties to the above entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as the Case Management Order in this case.

**DESCRIPTION OF THE CASE**

1. A brief description of the events underlying the action:

On December 7, 2006, Haws was a pre-trial detainee at the Monterey County Jail in Salinas. He was assaulted by a fellow inmate whom plaintiffs allege defendant County and Kanalakis, its sheriff, know or should have known as likely to attack Haws.

1 Plaintiffs allege that defendant County and its agents delayed intervention and transport of  
 2 Haws for medical treatment. Plaintiffs further allege that once Haws was transported to County's  
 3 medical facility, Natividad Medical Center, he received delayed diagnostic treatment and transport  
 4 to Community Hospital of the Monterey Peninsula where he eventually received medical  
 5 intervention. Plaintiffs claim that the assault and the delays in treatment caused plaintiff Haws brain  
 6 injury. His fellow plaintiffs assert claims for loss of consortium foundationed in 14<sup>th</sup> Amendment due  
 7 process guarantees.

8 2. The principal factual issues which the parties dispute:

- 9 a. Defendants' notice of Haws' jeopardy circumstance with his assailant.
- 10 b. Defendants' delay in responding to Haws' and delay in providing medical treatment.
- 11 c. Whether any delay in medical treatment exacerbated plaintiff Haws' condition.
- 12 d. Whether plaintiffs, any of them, were injured as a result of defendants' conduct.
- 13 e. Whether medical personal at Natividad Medical Center were independent contractors.
- 14 f. Plaintiff's brain injury has caused significant communication problems or other issues  
 15 giving rise to a serious loss of relationship with the remaining plaintiffs.

16 3. The principal legal issues which the parties dispute:

- 17 a. Whether defendants' conduct constituted a violation of a cognizable right under  
 18 federal law.
- 19 (1) Whether plaintiff can demonstrate conduct which constitutes a deliberate  
 20 indifference to detainees' personal security due to a pattern of over crowded,  
 21 improper placement of inmates and inadequate supervision of inmates by  
 22 sheriff's personnel.
- 23 (2) Whether evidence of delayed medical care constituted a failure to take  
 24 reasonable action to summons medical care pursuant to California  
 25 Government Code § 845.6.
- 26 b. Whether defendant Kanalakakis is entitled to qualified immunity.

- 1 c. Whether the care providers responsible for Jimmy Haws' treatment at Natividad  
2 Medical Center were independent contractors obviating County's liability pursuant to  
3 Government Code § 815.2(a) which applies the doctrine of respondeat superior only  
4 to employees' acts and omissions. (State law governmental immunities do not apply  
5 to federal causes of action.)
- 6 d. Whether the activities of the care providers responsible for Jimmy Haws' treatment  
7 at Natividad Medical Center were performing a non-delegable duty, removing the  
8 shield of Government Code § 815.2(a) pursuant to Government Code § 815.4.
- 9 e. Whether the work performed by the alleged independent contractors health care  
10 providers had an attendant peculiar risk of harm and the contractor failed to take  
11 necessary precautions, overcoming immunity pursuant to Government Code §  
12 815.2(a). *Castro v. State* (1981) 114 CA 3d 503 at 510, 170 CR 734.
- 13 4. The other factual issues which remain unresolved for the reasons stated below and how the  
14 parties propose to resolve those issues:
- 15 a. Independent contractor status (and ramifications thereof) for medical care providers.  
16 Independently of the County's liability for the conduct of alleged  
17 independent contractors, they remain liable pursuant to California case  
18 *Balding v. D.B. Stutsman Inc.* (1966) 246 CA 2d 559, 54 CR 717.
- 19 Defendants Natividad Medical Center has notified plaintiff's counsel that the ER  
20 physician was employed by California Emergency Physicians and that his primary  
21 nurse (Nurse Coniglio) was employed by another contractor, Nurse Finders. Mr.  
22 Sheuerman's office has agreed to provide documentary support of this representation.  
23 Upon its analysis plaintiffs' counsel may determine to name these defendants.
- 24 b. Defendant County has filed a second Motion to Strike which is set for hearing on  
25 November 2, 2007.
- 26 5. The parties which have not been served and the reasons: Not applicable.
- 27

6. The additional parties which the below specified parties intend to join and the intended time frame for such joinder.

- a. The medical care providers identified in ¶ 4a. for the reasons stated therein. Plaintiffs require documentary support for the representation of their independent contractor status and wish to depose each before determining whether to join them as defendants.
- b. Other private contractors including architect and general contractor who constructed /remodeled jail.
- c. Unidentified Doe defendants responsible for supervision and safety of Jimmy Haws at time he was exposed to a foreseeable danger.
- d. Other Doe defendants identified as a result of pre-trial discovery.

7. The following parties consent to assignment of this case to a United States Judge for trial: None.

#### ALTERNATIVE DISPUTE RESOLUTION

8. The parties filed a Notice of Need for ADR Phone Conference and the phone conference will be held on September 19, 2007.

9. Not applicable.

#### DISCLOSURES

10. The parties certify that they have made the following disclosures:

- a. Plaintiff Jimmy Haws complete medical records from defendant Natividad Medical Center, and CHOMP have been subpoenaed by the parties.
- b. Plaintiff's counsel will provide disclosure of plaintiff's subsequent medical records to include Pleasant Care Convalescent Hospital if available and his subsequent SNF, Mee Memorial Extended Care in Kings City.
- c. Defendant County of Monterey has provided the reports/statements from the investigation of the incident at the jail.
- d. Defendant Natividad Medical Center has not provided anything to date.

11. The Parties agree to the following discovery plan:

- a. Plaintiff wishes to depose percipient witnesses including the following Monterey County Sheriff Office administrators, detectives and jail personnel: MCSO Deputy Reed Fisher, Charles Murrie, Jonathan Ward, Edward Durham, Edward Gerrard, Alfredo Jiminez, L. Byrant, P. Ramos, Deputy Bregante, Sgt. Teeter, Deputy R. Cantu, Chief Deputy Burt Liebersbach, and Monterey County Sheriff Mike Kanalakis .
- b. Plaintiff wishes to depose the following civilian percipient witnesses: Michael Pitruzzello, Christopher Griffith, Abel Hernandez, Roger Spencer, and Jesus Solano.
- c. Plaintiff wishes to depose the following medical personnel: Crystal Coniglio, R.N., Craig A. Walls, M.D., B. Misa Hosohama, M.D., and Ray Miller, M.D.
- d. Defendant County will propound discovery to all plaintiffs.
- e. Defendant Natividad Medical Center wishes to depose all plaintiffs.
- f. Defendant Natividad Medical Center wishes to depose the care providers at Community Hospital of Monterey Peninsula including Ray Miller, M.D., Hans Poggemeyer, M.D., Dragan Dimitrov, M.D., and Georgia M. Heal, M.D.
- g. Defendant Natividad Medical Center wishes to depose plaintiff Jimmy Haws' care providers at the skilled nursing facility or other care facility where he currently resides, identifies presently unknown.
- h. Defendant Natividad Medical Center reserves the right to request the depositions of other individuals identified in discovery.

#### TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days: 10 days.

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MARTINI &amp; TABARI LAW

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MO. CO. COUNSEL

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1 Dated:

9/14/07

Michael Moore, Esq.

Attorney for Plaintiffs

4 Dated:

9-14-07

Ralph W. Boroff, Esq.

Attorney for Plaintiffs

7 Dated:

9-13-07

Traci A. Kirkbride

Deputy Counsel

Attorney for Defendants

County of Monterey and Michael Kanakakis

11 Dated:

9/12/07

David Sherman, Esq.

Attorney for Defendant

Natividad Medical Center

## CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

21 Dated:

JEREMY FOGEL

UNITED STATES DISTRICT JUDGE

1 Dated: \_\_\_\_\_

Michael Moore, Esq.  
Attorney for Plaintiffs

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4 Dated: \_\_\_\_\_

Ralph W. Boroff, Esq.  
Attorney for Plaintiffs

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7 Dated: \_\_\_\_\_

Traci A. Kirkbride,  
Deputy Counsel  
Attorney for Defendants  
County of Monterey and Michael Kanalakis

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9  
10 Dated: \_\_\_\_\_

David Sheuerman, Esq.  
Attorney for Defendant  
Natividad Medical Center

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JEREMY FOGEL  
UNITED STATES DISTRICT JUDGE